

Agenda Item Summary

1. ACTION REQUESTED/PURPOSE: Approve the Road Construction, Maintenance, and Hold Harmless Agreement between Lee County, KB Home of Fort Myers, LLC, and the Tortuga Reserve Community Association, Inc., allowing the construction and future maintenance of the Tortuga Reserve Entrance Road within public right-of-way including drainage and sidewalks in accordance with the local development order approvals.

2. WHAT ACTION ACCOMPLISHES: Board approval is necessary to finalize agreement. Allows for the construction of the entrance road to the Tortuga Reserve Subdivision within County right-of-way, as well as ongoing maintenance in the future.

3. MANAGEMENT RECOMMENDATION: Approve agreement.

4. Departmental Category: C9B **5. Meeting Date:** 06-20-2006

6. Agenda:		7. Requirement/Purpose: (specify)		8. Request Initiated:	
<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Statute			Commissioner	
<input type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance			Department <u>Transportation</u>	
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code			Division	
<input type="checkbox"/> Public	<input checked="" type="checkbox"/> Other			By: <u>Scott Gilbertson, P.E.,</u>	
<input type="checkbox"/> Walk-On				Director	

9. Background:
The proposed agreement provides that KB Homes of Fort Myers, LLC, and the Tortuga Reserve Community Association, Inc., will be responsible for constructing and continued maintenance of roadway improvements from the entrance of the Tortuga Reserve Subdivision to Island Park Road. In addition, the parties agree to indemnify and hold the County harmless from claims, losses, etc., due to any act or omission that arises from the construction or maintenance of the Tortuga Reserve Entrance Road.

Attachment: Road Maintenance and Hold Harmless Agreement (KB Home of Fort Myers, LLC, and the Tortuga Reserve Community Association, Inc.)

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
Scott Gilbertson	N/A	N/A	N/A	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>
									6.7.06

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
COUNTY ADMIN: *[Signature]*
6/8/06 10:35 AM
COUNTY ADMIN
FORWARDED TO: *[Signature]*
6/8/06

Rec. by CoAtty
Date: 6/8/06
Time: 5:30 AM

ROAD CONSTRUCTION, MAINTENANCE AND
HOLD HARMLESS AGREEMENT

THIS AGREEMENT entered into this _____ day of _____ 2006, by and between Lee County, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902 ("County") and KB Home Fort Myers, LLC, a Delaware Limited Liability Company authorized to conduct business in Florida ("Developer"), whose address is 4470 Fowler Street, Fort Myers, Florida 33901, and Tortuga Reserve Community Association, Inc., a Florida not-for-profit corporation whose address is 12601 World Plaza Lane, Building 52, Suite 2, Fort Myers, Florida 33907 ("Association").

WHEREAS, Developer is the owner and developer of certain property described as: The East ½ of the Northwest ¼ of Section 12, Township 46 South, Range 24 East, Lee County, Florida ("Property"); and

WHEREAS, Developer is constructing the Tortuga subdivision on the Property; and

WHEREAS, the County owns the fee title to a portion of the 50 foot wide right-of-way that will serve as the entrance road to the Tortuga subdivision and has an ingress and egress easement for the remainder of the entrance road as described in attached Exhibit "A" ("Tortuga Entrance Road Right-of-Way"); and

WHEREAS, the North 30 feet of the Tortuga Entrance Road lies within an existing Iona Drainage District Canal right-of-way ("IDD Canal"); and

WHEREAS, Developer desires to construct a **LOCAL** road and associated landscaping improvements in the public right-of-way for the Tortuga Entrance Road; and

WHEREAS, Developer has received development approval from the County to construct ~~in~~ the Tortuga Entrance Road within the public right-of-way, including roadway, drainage, and sidewalks, in accordance with development order # 2004-00155 on the Property; and

WHEREAS, Developer has or will install a **LOCAL** roadway within the public right-of-way known as Tortuga Entrance Road as depicted and identified on attached Exhibit A2; and

WHEREAS, the County has agreed to allow the Tortuga Entrance Road to be installed and remain within the public right-of-way, provided that the **LOCAL** roadway and other improvements are maintained and replaced as necessary by the Developer or his successors in interest at no cost to the County; and

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The County authorizes the construction of the Tortuga Entrance Road within the public right-of-way in accordance with the project application submitted by the Developer and approved by the County.

2. The Developer agrees to bear the cost of constructing the Tortuga Entrance Road within the public right-of-way **TO LOCAL ROAD STANDARDS**.

3. The Developer assumes all risk and responsibility for any loss or injury to property or persons occasioned by the neglect or accident of Developer, its agents or employees during the progress of work until the roadway project is complete and obtains County approval. The Developer agrees to repair any damage that may occur to adjoining buildings, structures, utility easements, roadways or private property during the course of the work.

4. The Developer accepts the sole responsibility to obtain appropriate federal, state and local permits to install and maintain the public roadway. The Developer also agrees to give all required notices associated with work on the project, including those outlined in Lee County Administrative Code 11-11. (Lee County Roadway Landscaping Policy.)

5. In accordance with the responsibilities assumed by each party to the agreement, the Developer and its successors and assigns agrees to indemnify, hold harmless and defend the County, its employees and agents, from and against all claims, losses, demands, payments, actions, judgments and liabilities, including litigation costs and attorney's fees, due to any act or omission by the Developer, its employees, agents, or subcontractors, that arise from the placement, replacement or maintenance of the roadway contemplated by this agreement. The minimum insurance requirements are set forth in Exhibit "B". Ten days prior to the commencement of work under this agreement, the developer will provide to the Risk Manager for Lee County a Certificate of Insurance for review and approval. This certificate must name "Lee County, a Political Subdivision and Charter County of the State of Florida, its agents, employees and public officials" as an "Additional Insured" on the general liability policy.

Lee County must be given 30 days notice prior to cancellation or modification of the stipulated insurance. The notification must be in writing, sent by registered mail, return receipt requested and addressed to Lee County Risk Management, P.O. Box 398, Fort Myers, FL 33902-0398. In addition, when maintenance responsibility is transferred to the Tortuga Reserve Community Association, Inc., (TRCA) it will be the responsibility of TRCA to provide evidence of insurance consistent with the terms of this paragraph. A new certificate of insurance will be provided annually to the County Attorney's Office.

6. The Developer assumes the risk and responsibility for any loss or injury to property or persons occasioned by the failure to properly maintain the roadway or due to

neglect or accident during the maintenance process. The Developer agrees to repair damage that may occur to any adjoining building, structure, utility easement, roadway or private property during the course of the maintenance work.

7. The parties agree that upon receipt of a Certificate of Compliance on Development Order No. 2004-00155, all obligations of the Developer under this agreement will become the obligation of the Association, and the Developer will be released from liability under this agreement, but only after the Association submits evidence that the Association has secured a liability insurance policy with respect to maintenance of the roadway and other improvements in the right-of-way sufficient to meet the indemnification requirements set out in Paragraph 5.

8. This agreement will continue in full force and effect until the right-of-way is closed, abandoned, vacated, discontinued or reconstructed, or written notice of the intent to terminate the agreement is delivered to each party, their successors or assigns. If the Developer terminates this agreement, the County has the option to require the terminating party to remove the roadway improvements at no cost to the County.

9. This instrument is binding upon and enures to the benefit of the parties' heirs, executors, successors and assigns.

10. This agreement is intended to be construed in accordance with the laws of the State of Florida.

11. This agreement is the entire agreement between the parties and cannot be amended or modified except by written instrument executed with the same formality.

In Witness Whereof, the parties have signed below.

KB HOME FORT MYERS, LLC,
a Delaware Limited Liability Company

Witness

Printed Name

By: _____
Rod Benson, Vice President, Land

Witness

Printed Name

STATE OF FLORIDA
COUNTY OF LEE

The foregoing Agreement was acknowledged before me this ____ day of _____ 2006 by Rod Benson, as Vice President, Land of KB Home Fort Myers, LLC, a Delaware Limited Liability Company that is authorized to conduct business in Florida, on behalf of the corporation, who is personally known to me or who has produced _____ as Identification.

Notary Public
Printed name:

TORTUGA RESERVE COMMUNITY
ASSOCIATION, INC.
a Florida not-for-profit corporation

Witness

Printed Name

By: _____
Dan Edwards, President

Witness

Printed Name

STATE OF FLORIDA
COUNTY OF LEE

The foregoing Agreement was acknowledged before me this ____ day of _____ 2006 by Dan Edwards, as President of Tortuga Reserve Community Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation, who is personally known to me or who has produced _____ as Identification.

Notary Public
Printed name:

ATTEST:
CHARLIE GREEN, CLERK

By: _____
Deputy Clerk

LEE COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

By: _____
Chairwoman

APPROVED AS TO FORM

Office of County Attorney

Exhibits:

- A1. Description of Tortuga Entrance Road
- A2. Sketch
- B. Minimum Insurance Requirements



METRON

SURVEYING & MAPPING, LLC

LAND SURVEYORS • PLANNERS

LEGAL DESCRIPTION
OF A PARCEL LYING IN
SECTION 12, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA

A TRACT OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, IN SECTION 12, TOWNSHIP 46 SOUTH, RANGE 24 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

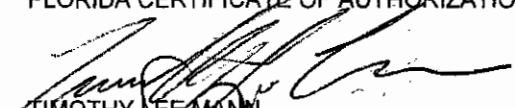
COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 12; THENCE N.88°27'11"E. ALONG THE NORTH LINE OF SAID SECTION 12 FOR A DISTANCE OF 1,322.86 FEET; THENCE S.01°32'49"E. LEAVING SAID SECTION LINE FOR A DISTANCE OF 2,644.96 FEET; THENCE N.88°26'25"E. FOR A DISTANCE OF 1,205.43 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N.88°26'25"E. FOR A DISTANCE OF 89.86 FEET TO A POINT ON A NON TANGENT CURVE TO THE LEFT WITH A RADIUS OF 125.00 FEET, A CHORD BEARING OF S.87°56'01"E. A DISTANCE OF 15.81 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°15'08" AN ARC LENGTH OF 15.82 FEET; THENCE N.88°26'25"E. FOR A DISTANCE OF 1,309.75 FEET TO THE WESTERLY RIGHT OF WAY LINE OF ISLAND PARK ROAD; THENCE S.00°46'23"E. ALONG SAID RIGHT OF WAY FOR A DISTANCE OF 38.00 FEET; THENCE S.88°26'25"W. LEAVING SAID RIGHT OF WAY FOR A DISTANCE OF 1,309.22 FEET TO A POINT OF A NON TANGENT CURVATURE TO THE RIGHT HAVING A RADIUS OF 166.39 FEET, A CHORD BEARING OF N.71°17'50"W. A DISTANCE OF 112.61 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 39°33'28" AN ARC LENGTH OF 114.88 FEET TO THE NORTH LINE OF OFFICIAL RECORDS BOOK 2235, PAGE 2263 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND THE POINT OF BEGINNING.

TOTAL PARCEL LYING WITHIN 50' ROAD EASEMENT GRANTED TO LEE COUNTY AS RECORDED IN OFFICIAL RECORDS BOOK 2235 AT PAGE 2263 OF THE PUBLIC RECORDS OF LEE COUNTY. PARCEL CONTAINS 1.21 ACRES, MORE OR LESS.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN)

BEARINGS ARE BASED ON THE WESTERLY RIGHT OF WAY OF ISLAND PARK ROAD AS BEARING S.00°46'23"E.

METRON SURVEYING & MAPPING, LLC
FLORIDA CERTIFICATE OF AUTHORIZATION LB# 7071



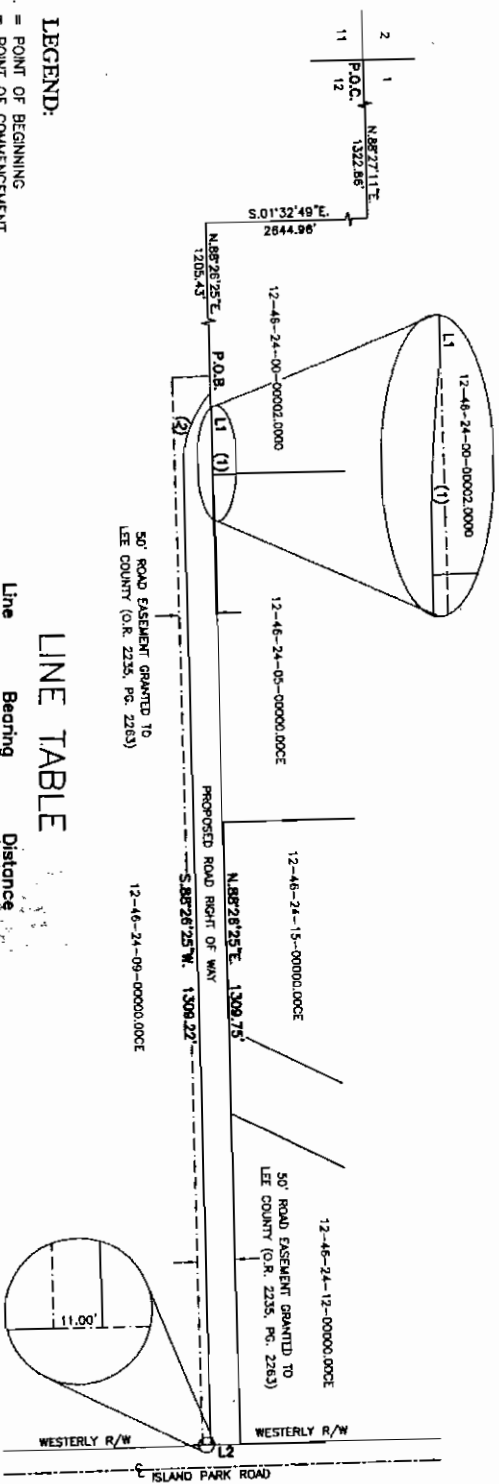
TIMOTHY LEE MANN
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5838

SKETCH TO ACCOMPANY DESCRIPTION

* SEE SHEET 1 OF 2 FOR LEGAL DESCRIPTION *

CURVE TABLE

NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	CHORD BEARING
1	125.00'	07°15'08"	15.82'	7.92'	15.81'	S.87°56'01"E.
2	166.39'	39°33'28"	114.88'	59.83'	112.61'	N.71°17'50"W.

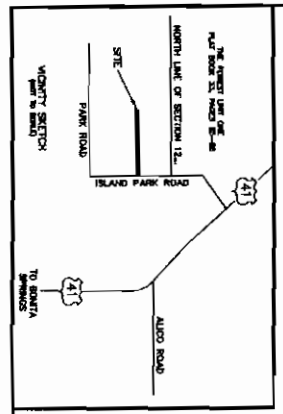


LINE TABLE

P.O.B. = POINT OF BEGINNING
 P.O.C. = POINT OF COMMENCEMENT
 R/W = RIGHT-OF-WAY
 O.R. = OFFICIAL RECORDS
 PG. = PAGE

Line	Bearing	Distance
L1	N.88°26'25"E.	89.86'
L2	S.00°46'23"E.	38.00'

* THIS IS NOT A SURVEY *



NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A
 FLORIDA LICENSED SURVEYOR AND MAPPER.

REVISED: TO CORRECT SCRIVERNER'S ERROR 3-20-06 RY
 REVISED: TO CORRECT SCRIVERNER'S ERROR 3-10-06 RY
 REVISED: TO CORRECT SCRIVERNER'S ERROR 2-01-06 RY

BY: *[Signature]*
 TIMOTHY LEE MANN
 PROFESSIONAL SURVEYOR AND MAPPER
 FLORIDA CERTIFICATE NO. LSF 5838

DATE SIGNED: *[Signature]*

SKETCH OF DESCRIPTION

METRON
 LAND SURVEYORS & MAPPING
 LAND SURVEYORS - PLANNERS
 LID# 7071

10970 SOUTH CLEVELAND AVENUE, UNIT #605
 FORT WATERS, FLORIDA 33907
 PHONE: (239) 275-8575
 FAX: (239) 275-8457
 www.metronfl.com

TITLE:	3262K/R.dwg	FIELD BOOK/DATE:	N/A	PROJECT NO.:	3262	SHEET:	2 OF 2
SECTION DATE:	1-27-06	DRAWN BY:	RY	CHECKED BY:	TLM	(S-1-R)	12-46-24

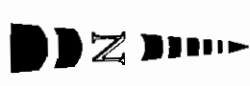


EXHIBIT "B"

Minimum Insurance Requirements

a. Workers' Compensation - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this agreement to apply to all owners, officers, and employees regardless of the number of employees. Individual employees may be exempted per State Law. Employers' liability will have minimum limits of:

\$100,000 per accident
\$500,000 disease limit
\$100,000 disease limit per employee

b. Commercial General Liability - Coverage must apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 bodily injury per person (BI)
\$1,000,000 bodily injury per occurrence (BI)
\$1,000,000 property damage (PD) or
\$1,000,000 combined single limit (CSL) of BI and PD

c. Business Auto Liability - The following Automobile Liability will be required and coverage must apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 bodily injury per person (BI)
\$1,000,000 bodily injury per occurrence (BI)
\$1,000,000 property damage (PD) or
\$1,000,000 combined single limit (CSL) of BI and PD

****The required limit of liability shown in Standard Contract: 1.a; 1.b; 1.c; may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."***

It is the responsibility of the Developer/Association to ensure that all contractors and subcontractors comply with all insurance requirements.